App. F. IX-4

Previous References Cs 85-32-1-2 (CS) 1940

Law Dep 76-39

Cs 130-26-1-2

Cs 2-86-1-9

Later References.

File No. 88-40

Serial Nos. 1-2

PRESERVED

P-15

E

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 2

Part B for Sept 41

SUBJECT.

Execution of decrees passed in the Nepal State Courts in British India

No AF 1434 dated 19-9-41 to the Resident stating the decrees cannot be executed in Br. India

WD 0578—GPB—22,500—12-9-39

Serial No.

Letter No 11065/Ex. dated 31-3-41 from the Registrar H.C. forwarding a copy of the resolution of the 27th meeting Provincial Boot Centre re the execution of Coop. decrees of the Mysore State and stating that it does not appear to be possible to do anything in the matter

Bd. 85-32 (1-4) Jag M
Law Dept 76-39

1) The files relating to this question and reply to this D.O. are placed below for perusal

The question was first discussed in 1932 on a reference from the Registrar H.C. The Govt Advocate was of opinion that it was doubtful whether the Br. India Courts would agree to execute a Civil decree passed in this State but that as the first case there would be no harm to send a decree for execution. But it was not then considered worthwhile (Paras 7-9 of the Note in file Bd 85-32)

The question was again taken up for consideration in 1939 and it was observed that the decrees passed in Mysore State are not executable in British India. The question of C+M States stands on quite a different footing than of British India.

Law Dept 76-39 Jag M

2) The copy of an article on the subject enclosed by the Registrar puts forth some suggestions. Whether the suggestions made therein are acceptable and are feasible may perhaps be considered in consultation with the Law Secretariat Labs for orders

NOTE—Contn. Sheet.

21/4/41

2

File No. 357 of 194 | General and Revenue Secretariat

Serial No.

3) The Registrar has not indicated in his letter what steps are necessary to be taken in the matter. From para 14 of the Note of the Law Department 76-39, it is seen that the execution of our Cooperative Society Decrees could be possible in British India if Govt of India issue a necessary notification in this behalf. The Registrar may perhaps be asked whether want of such facility now is operating as a great difficulty in the case of a number of Cooperative Societies and whether the increasement caused the existing circumstances require the taking of necessary action to obtain such notification. It has to be based upon statistics such as the no of cases in which the defaulters have gone to British India the total amount of arrears involved the no & names of Societies so affected

4) If approved, a reference may perhaps be made to the Registrar on these lines; asking him to furnish the necessary figures

(Genl Secy)

21.4.41

5) [illegible]

22/4/41

GENERAL
22 APR. 1941
2803

3576

General and Revenue Secretariat | File No. | of 194 | App. F. III-2

Serial No. 6

Submitted for orders whether the file may be unofficially referred to the Registrar for favour of remarks Memo No 278-9/1940-41 dt 23/4/41 RTN 23/4. Forwarded with Compliments to the Registrar of Co-operative Societies for favour of remarks unofficially on the points raised in the previous page

By order
Rangamelly
for General Secretary

23.4.41

With CS 85-32(6-2) Lawsh 76-39

Office of the Registrar of Co-operative Societies 25 APR. 1941 6469

12393es
2.5.41

Returned with compliments.

8) There are not many societies in the Mysore State which have to realise amounts from their members and past members who have settled down in the British Indian Provinces. The resolution of the Conference appears to be based on theoretical grounds. I do not think there is any necessity to move the Government of India to issue a notification to the effect that the awards and decisions passed under the Mysore Co-operative Societies Act may be executed by British Indian Courts. The question may be considered when the neighbouring British Indian Provinces of Madras, Coorg Bombay move their Governments for execution in the Mysore State of the decisions and awards passed under the respective Co-operative Societies Acts. For the present, the Mysore Co-operative Institue, under whose aegis the Conference was conducted and which has submitted the resolutions

NOTE—Contn. Sheet.

E

3571

File No. of 194 | General and Revenue Secretariat

Serial No.

resolutions passed at the Conference, may be intimated that the decisions or awards passed under section 43 A of the Mysore Co-operative Societies Act cannot be executed by British Indian Courts.

Registrar.

GENERAL SECRETARY. 3 MAY 1941

9) Sir, The Revenue Member should advise. The matter may be drafted & may be agreed in the Committee. Work of the Department member. I am moved out of the State, the Secretary can file a Bench in a Civil Court instead of before the Registrar & get the decree transferred to the British Indian Court for execution.

3.5.41

10) 2nd Member)

3/5/41

11)

7/5

7/5

12) Draft reply sent for approval

8/5/41 Para 2 of the Draft is based on the Govt. Sols. advice in Para (4) of file no 85-32

BVN 8/5

GENERAL SECRETARY. 3 MAY 1941

OFFICE OF THE SECOND MEMBER OF COUNCIL No. 1118

Serial No.

where it is stated that the decrees of Civil Courts of Mysore may be executed by the British Indian Courts in pursuance of Govt of India notification dated 25.11.1881

For remarks whether para 2 in the Draft is alright & may be issued

Addl Secy (Law) 9/9/41

Law 170 of 40
10th day 1941.

Secy (Law) 9/9/41

Under Sec 43 A (2) (a) of the Mysore Civil Courts Act, the Registrar may settle the case himself, or he may under Sec 43 (2) (c) refer the parties to the Civil Court

Thus, a decree may file a suit in a Civil Court, under the orders of the Registrar If a suit to file petition in Civil Court, & the Judge considers any Mysore, a decree is passed against in the case, then the Panchayat decree can be executed in British India, & the Procedure to said to be conclusive between the parties (under Sec 13 of the C.P.Code), & if the conditions laid down in Sec 44 of the C.P. Code of Brit India are satisfied.

Law Secretary 8/9/41

There is no need to print para 2 the question is not free from doubt Whether such a decree can be executed in Br. India depends

SECY. LAW DEPT. 8 SEP. 1941 MYSORE

NOTE—Contn. Sheet.

File No. 3576/6430/AT 07 of 194 | General and Revenue Secretariat

Serial No.

on the facts of each case

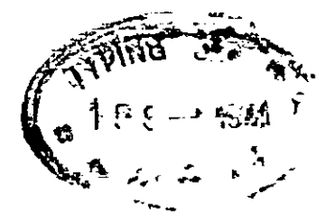
Hm 3/11/41

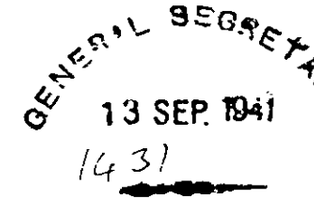
(Bor Secy / Education) 3/11/41

Yc

Draft reply for perusal before June

(Genl Secy)





12/9

13/9

13/9

AT 1434 dt. 19.9.41 to the Regr. Yes 2

cs. decrees

States that (the decisions of the Regr or Awards of an arbitrator) cannot be executed by the British Indian Courts.

B 23/9/41

No. 11065 C. S.

GOVERNMENT OF MYSORE.

DEPARTMENT OF CO-OPERATION

OFFICE OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES IN MYSORE.

Telegraphic Address
"CO-OPERT"
Bangalore.

Dated Bangalore, 31st March *194* 1.

C.S.88-40-1

FROM

M. ABDUL HUKH, ESQ., B.A.,
Registrar of Co-operative Societies in Mysore,
BANGALORE.

To

J.Appaji Gowda,Esq.,B.A.,(Hons),
General Secretary to the Government
of Mysore, Bangalore.

GENERAL SECRETARY
1 APR. 1941

Sir,

I have the honour to state that the marginally noted Resolution was passed at the 27th Mysore Provincial Co-operative Conference held in October 1940 requesting that Government may be pleased to arrange for the execution of co-operative societies decrees outside the State. Government have been pleased, in their Order No.D.4729/C.S.85-32-2 dated 28th June 1933 to observe that decrees or awards in respect of co-operative suits in the Mysore State cannot be executed through foreign courts. In this connection, I may state that under Section 193-A of the Mysor Land Revenue Code, amounts recoverable as arrears of Land Revenue accruing in and payable to the Collector of the Civil and Military Station, Bangalore are recoverable in the Mysore State. Similarly amounts recoverable as arrears of Land Revenue and due to the Deputy Commissioner, Bangalore District from persons residing or carrying on business in the Civil and Military Station, Bangalore, are recovered by the Collector of the said Civil and Military - Station. This facility has not been extended to the British India Provinces and Indian States and in its absence, it does not appear to be possible to do anything for the recovery of amounts due by persons who are residing outside the State. In this connection, a copy of an article that appeared recently in the Indian Co-operative

"That Government be requested to arrange for the execution of co-operative societies decrees outside the State."

P.T.O.

Co-operative Review on this subject is enclosed for the information of Government.

I have the honour to be,
Sir,
Your most obedient servant,

Registrar.

L.S.26/3.

Execution of decisions in Co-operative Disputes

Co-operation between State & Provinces.

-:x===xxxxxxx===:-

In a really Co-operative world, there ought not to be any disputes at all, and the question of decisions and their execution would not then really arise at all. But it is wishful thinking, and in this world of mixed good and evil, mixed honesty and dishonesty, default in keeping the terms of the bond executed by members in favour of the Co-operative institutions to which they belong is not so rare a phenomenon as one could wish. The default may or may not be deliberate. Anyway, defaults there have been and there will be. The legislature has therefore had to think of these defaults and to provide the steps to be taken to launch disputes and to arrange for decisions and for the execution of such decisions. To this end, the several provincial legislatures have incorporated, in their enactments, provisions for execution of those decisions either through the Government Agency for the collection of land revenue or through the ordinary Civil Courts. I have dealt with this aspect of the matter in general in relation to the law existing and the difficulties experienced in resorting to the two agencies in Mysore in an article which appears in the Mysore Co-operative Journal, May 1940.

The question that I propose now to deal with is a different one. It refers to the execution of decisions of Registrars and Assistant Registrars of Co-operative Societies (in a British Indian Province) when the debtor has left the said province with no properties there capable of being proceeded against and has migrated to an Indian State and vice versa. Cases of this kind have occurred and practical difficulties have been experienced and in the interests of co-operation, it appears necessary that all those who have those interests at heart should bestir themselves and move for due provision beging made to overcome the said difficulties.

I refer to the position in Mysore. In Sri Gajanana Urban

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Urban Co-operative Bank Ltd., Byadagi Vs.Basavamma (a case reported in 17 Mysore Law Jouranal at page 436) it has been held that "it is only decrees of a Civil or Revenue Court in British India that can be executed in the Mysore Courts (subject to other limitations under Section 43 of the Code of Civil Procedure). The award of a Registrar of Co-operative Societies in British India or his nominee or Arbitrators appointed by him is not such a decree and does not come within the scope of Section 43 of the Code of Civil Procedure and cannot be executed by a Court in Mysore".

Further, it has been held that "the fact that according to the provisions of the Bombay Co-operative Societies Act such an award may be executed by any Civil Court in the same manner as the decree of such Court does not invest such an award with the character of a decree of a Civil or Revenue Court so as to bring it within the scope of Section 43 of the Code of Civil Procedure.

It is apparent from the foregoing extract that it is enough for a man (who owns no properties in British India) who has been a member of a Co-operative Society in British India to get into Mysore in order to escape the liability under an award or decision of the Registrar or an Assistant Registrar of Co-operative Societies of the Province.

Before the ruling in the case referred to above was given, the position of law on the matter in Mysore was not clear. At any rate, it was open to urge that such awards or decisions of Registrars and Assistant Registrars were executable by Civil Courts in Mysore.

In two reported cases, the Madras High Court has held that the Registrar is a Court. In Thadi Subba Reddi Vs.Emperor,(A.I.R.1930 Madras p.869), Pandalai, J., held that the Registrar was a Court, but the question in that case was in relation to Section 195 of the Code of Criminal Procedure. This decision would perhaps be distinguished on that ground. In Velayuda Mudali v. Co-operative Rural Credit Society (A.I.R.1934 Madras 40), Walsh, J. held that a Registrar of Co-operative Societies

Societies was a Court. This was in relation to Section 52 of the Transfer of Property Act. This decision would also perhaps be distinguished on the ground that the question was whether a transfer of property pending proceedings before a Registrar was made pendente lite. It is thus seen that there is no authority - directly in point.

Taking the state of law in Mysore, unless the Registrars and the Assistant Registrars of British Indian Provinces are held to be Civil or Revenue Courts, no decision or award of a Registrar or an Assistant Registrar of a British Indian Province can at all be executed in Mysore.

What then is the remedy? I think the Government of India or the Provincial Governments may be moved to amend the Co-operative Societies Acts or the Code of Civil Procedure so as to - clearly declare the Registrars and the Assistant Registrars of Co-operative Societies in British Indian Provinces to be Civil Courts for purposes of transfer to Courts in the territories of any Foreign Province or State, and to move the Government of Mysore to include a similar provision. This can only be done if those in British India who have the interests of Co-operative Societies at heart exert themselves and take effective measures.

Co-operative Institutions in Mysore, also, have felt -- difficulties in the converse cases. Members of societies in Mysore have emigrated to British Indian Provinces, and it has been difficult or impossible to proceed against them even in cases where the debtors have consented to a decree or contested the proceedings before the Registrar or the Assistant Registrar. Employees of the Postal Department are an instance. Postal authorities in British India have refused to co-operate in the attachment of salary of defaulting members who are employees of the Postal Department. In this connection, it may be mentioned that the Co-operators in Mysore, at the 27th Mysore Provincial Co-operative Conference held on the 7th and 8th October 1940, have resolved that Government be requested to arrange for

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for the execution (outside the State) of decrees obtained by Co-operative institutions in Mysore. The difficulties are thus mutual, and as in the case of other ills, co-operation is the only remedy. Co-operation between Provinces and States is thus essential, and co-operators in Mysore have to exert themselves equally as their brethren in the British Indian Provinces.

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L.S.29/3.

for Registrar.

Appendix F G—1]

SUBJECT.....

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13

Section 65

File No. 88-40

Serial No. ✓

Diary No. of letter replied to.....

No. A7/1434

To

The Registrar C.S

Sir

General and Revenue Secretariat

( )

the *19*

Date of issue 19-9-41

Signed by .....

According to your letter No 11065/C.S dated the 31st March 1941 ~~forwarding~~ forwarding the resolution of the 27th Mysore Provincial Co-op. Conference on the Executive of C.S. Banks and the Hon'ble I am directed to state that in the ~~circumstances explained in~~ your memorandum ~~note dated 7-5-41~~ the Mysore Co-op. Institute may be informed that the decisions or awards passed by the Registrar or arbitrator under section 43A

List of enclosures.....

Copied by .....

Examined by.....

of the C.J. can not be executed

~~on his motion~~ by British Indian Courts

2) [I am however to say, in this connection, that if the defaulter member has moved out of the State, it is open to the Society to file a suit in a Civil Court situated at his/her native place and get the decree transferred to the Civil Courts of that place for execution.] Subject to above.

Not necessary
Hm
20
11/9/14.

omit

Thanks

14/9

BSM
8/5

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

General and Revenue Secretariat.

No. A41/1421 / PS 88-40-2

Dated, Bangalore, 4th September 1941

FROM

The Secretary to the Government of His Highness the Maharaja of Mysore.

General Department.

To

The Registrar of Co-operative Societies
in Mysore, B a n g a l o r e.

Sir,

Adverting to your letter No.11065/Cs. dated the 31st March 1941 forwarding the resolution of the 27th Mysore Provincial Co-operative Conference regarding the execution of Co-operative Societies decrees outside the State, I am directed to state that the Mysore Co-operative Institute may be informed that the decisions or awards passed by the Registrar or arbitrator under Section 43 A of the Co-operative Societies Act cannot be executed by British Indian Courts.

I have the honour to be,
Sir,
Your most obedient servant.

Secretary to Government,
General Department.

BSN/4.

6430

1) I have dealt with a case in which a decree was passed in a case in which the Registrar of Co-operative Societies was a party. Please see in Book - Please put up that file

2) Kind reference is invited to paras 7 to 20 of the file Law Dept 76-39 placed below, where it has been held that the decrees passed by the Registrar of Co-operative Societies cannot be executed in British India. This seems to be the case referred to above in para.

In addition to the collections already put up in the file, the following two files, viz 130-36 Sls 1-2 which deals with the question of execution of ex-parte decrees outside the State and viz file 2 of 1886 Sls 1-9 which deals with the question of reciprocal execution of Civil processes between the Mysore Govt & other Courts established by British, are also herewith put up for reference and submitted for orders.

It is submitted that since some difficulty was experienced in tracing the full references on the point

Law
21/8